



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 30, 2023

IN THE MATTER OF:

Appeal Board No. 628508

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 12, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 7, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. Although the Judge called the employer's representative and the representative stated that it did not represent this employer, the Judge did not call the employer's phone number listed on the notice. At the further hearing, the employer should call the employer. The Commissioner of Labor should appear and explain its position with regards to whether the correct employer is on notice for the hearing.

The employer should have an opportunity to provide testimony and evidence regarding the circumstances of how the claimant's employment ended. The employer should be questioned regarding what, if anything, the claimant was told at hire regarding overtime, whether the claimant informed her supervisor that she could not work overtime hours, and, if so, the reason(s) that the

claimant gave for not wanting to work overtime.

Finally, the claimant should provide additional testimony about the dates of her employment for 2022, whether she only worked during the summer, and the name of the supervisor who denied her request concerning reducing her hours. In this regard, the claimant's claim should be marked as an exhibit and properly entered into the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation from employment without good cause, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of voluntary quit without good cause, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER